

S.B. Civil Revision Petition No.310/2005

M/s. Kanhayalal & Company

vs

Assistant Commercial Taxes Officer, Jalore.

DATE OF ORDER : - 1.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.Dinesh Mehta, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order of the Tax Board dated 17.1.2005 by which the Tax Board, Ajmer allowed the appeal of the department against the order of the Dy. Commercial (Appeals), Commercial Taxes, Jodhpur dated 9th Oct., 2003.

Brief facts of the case are that the transport vehicle no.GJ-9B/5015 was intercepted near village Makhupura. The driver of the vehicle admitted that he was taking the goods to Dhanera in Gujarat State. The plea of the assessee is that for the goods, which were in the said vehicle, the State Government issued notification exempting the tax in case goods are sold within the State of Rajasthan. The assessee

sent the goods to the firm M/s. Girdharilal Khushaldas, Raniwara within the State and not to any firm outside the Rajasthan. A notice was issued to M/s. Girdharilal Khushaldas, Raniwara by the assessing authority. The proprietor Sh. Kantilal of the said firm informed that he never purchased the said goods from the assessee. The assessing authority after considering the evidence held that the goods were meant for sending to Dhanera in the State of Gujarat and, therefore, the assessee tried to evade the tax and produced bogus bills. The tax and penalty were imposed against the assessee under Section 78(5) of the Rajasthan Sales Tax Act, 1994 by order dated 23rd March, 1998.

The assessee preferred appeal, which was allowed by the Dy. Commissioner (Appeals), Commercial Taxes, Jodhpur vide order dated 20th Oct., 2003. Therefore, department preferred appeal before the Tax Board. The Tax Board allowed the appeal of the department vide order dated 17.1.2005. Hence, this revision petition.

According to learned counsel for the petitioner, the petitioner's goods were intercepted only on the basis of doubt and in fact, the assessee never sent the goods to Dhanera (Gujarat) and in fact, the goods were sent to the businessman at Raniwara within Rajasthan. The assessee also produced the copy of the account books as well as copy of the demand draft by which he received the price of the goods from the

firm of Raniwara.

I considered the submissions of learned counsel for the petitioner and perused the reasons given by the three authorities below. It is clear that the driver of the vehicle immediately gave his statement and admitted that the goods were to be delivered at Dhanera in Gujarat. The truck was intercepted 2 K.M. away from the road for Raniwara. The appellate authority also accepted the statement of the proprietor of the firm M/s. Girdharilal Khushaldas, who admitted that he did not purchase the goods from the assessee firm since last one or two months. The Tax Board also considered the alleged copy of the statement of accounts and the letter of M/s. Girdharilal Khushaldas. The Tax Board found that there is no mention of any number or date on the letter pad and, therefore, that evidence cannot be accepted.

In view of the above, the Tax Board on the basis of the appreciation of the evidence, as a matter of fact, held that the assessee tried to export the goods outside the Rajasthan and produced bogus bills and, therefore, reversed the order of the appellate authority and restored the order of the assessing authority. I do not find any illegality in the order passed by the Tax Board and in fact, the appellate authority reversed the finding recorded by the assessing authority without assigning any valid reason.

Hence, the revision petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-